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U.S. Department of Justice

Immigration and Naturalization Service

identifying documents to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-01-137-56192 Office: California Service Center

Date:

JAN 14 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a multimedia firm with six employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a technical manager for a period of three years. The director denied the petition because the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation. The director further determined the petitioner had not made a bona fide employment offer to the beneficiary.

On appeal, the petitioner submits a statement.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director determined the petitioner had not demonstrated that it had sufficient work at the H-1B level for the beneficiary to perform or that it had the financial resources to pay the beneficiary's offered wage. On appeal, the petitioner stated that it has ample work for the beneficiary at the H-1B level and also that it has the financial resources to pay the beneficiary's salary.

The director has introduced the concept of "speculative employment" into this proceeding. There is no support for the exploration of this concept per se in either the statute or the regulations. Similarly, the director has questioned the petitioner's ability to pay the beneficiary's offered wage. Wage determinations and the enforcement of their payment with respect to the H-1B classification are the responsibility of the Department of Labor. Therefore, the denial of the petition on this basis cannot stand.

The director further determined the petitioner had not shown that the beneficiary's foreign education, training, and work experience are equivalent to a baccalaureate degree in a specific specialty such as computer science or management information systems. The director, therefore, denied the petition because the petitioner had failed to show that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner states that it wishes to hire the beneficiary because he is bilingual, understands the technology well, and has extensive experience in the industry. The petitioner further states that the firm is not looking for someone with a computer degree, but rather for someone with hands-on experience.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary was awarded a Bachelor of Science degree in Metallic Functional Materials from the Northeast Institute of Technology in China on July 31, 1956. The petitioner states that the beneficiary was subsequently awarded a "course certificate" in Physics from Beijing University in July 1957, but the record does not contain any documentation relating to this certificate. Although the beneficiary studied engineering drawing, advanced mathematics, and electrotechnics during his studies at the Northeast Institute of Technology, he completed these courses during the period from 1952 to 1956, prior to the development of computer technology as it currently exists. Therefore, the beneficiary's degree in metallic functional materials does not qualify him to perform services in a computer-related specialty occupation.

The record contains a certificate from the National Education Examinations Authority, the Ministry of Education of China, showing that the beneficiary passed the "National Computer Rank

Examination." If the computer knowledge tested by this examination was obtained through an in-house computer training program at the beneficiary's place of employment, the petitioner has not provided any evidence setting forth the specific courses of study, the level of practical training, or the total number of hours of any program that the beneficiary purportedly undertook prior to passing this examination.

Although the petitioner was requested in a Service notice dated May 15, 2001, to provide an evaluation of the beneficiary's foreign education, the petitioner has failed to provide such evaluation, either in response to the notice or on appeal. In view of the foregoing, it is concluded the petitioner has not shown that the beneficiary qualifies to perform services in a specialty occupation based on education alone.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner states that the beneficiary has worked for Central Iron & Steel Research Institute in Beijing, China as a project researcher since his graduation in 1956. The petitioner claims that the beneficiary began taking "internal courses" in computer science since the early 1990s, but no evidence has been provided to document this training other than the "National Computer Rank Examination" certificate mentioned above. While the petitioner asserts that the beneficiary is proficient in skills such as TCP/IP, DNS and FTP protocols and Visual Basic (VB) programming, the record does not contain any documentation from the beneficiary's former employer to corroborate this assertion. Furthermore, the petitioner has not provided any evidence to show that the beneficiary's foreign education, purported computer training, and work experience are equivalent to a baccalaureate degree in a specific specialty such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

Additionally, the petitioner has not provided any evidence to show that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or that his experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

Beyond the director's decision, it is noted that the petitioner has not submitted sufficient evidence to show that the proffered position is a specialty occupation. The specific duties of the position most closely resemble those of a computer support specialist or systems administrator as that job is described by the Department of Labor in its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 171-174. A review of the Handbook at page 173 finds no requirement of a baccalaureate degree in a specific specialty for employment as a computer support

specialist or systems administrator. Due to the wide range of skills required, there are a multitude of ways an individual can become a computer support specialist or a systems administrator. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. As the appeal will be dismissed for the reasons set forth above, however, this issue need not be discussed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.